

### R E M A R K S

The above amendment is submitted to place the application in condition for allowance and is in response to the Examiner's Action, paper number 9. In that Action, the Examiner rejected the claims 34-39 (renumbered) as being obvious over Schmitt in view of Roe et al and West et al.

Applicant has amended the claims to assure that its tackifier is not intended to agglomerate or ball particles which would be counter productive for the provision of a covering of a soil surface.

Along these lines, Applicant asserts that the Schmitt and Roe references are drawn toward non-analogous art. Agglomeration concerns the producing of pellets or balls which are eventually employed to process metal containing ores in a refining process. As shown in the Schmitt and Roe patents, emulsions are normally created in the palletizing process. Creation of an emulsion or the producing of pellets is nothing that would be considered by a person of ordinary skill in the art for manufacturing a tackifier or palliative for dust or other particulate matter on a soil surface. Thus, a person of ordinary skill in the art of pelletizing in the metal refining field is not one who would concern with producing a tackifier composition which may be employed in hydro seeding. In re Clay, 996 F. 2d 656, 659 (Fed. Cir. 1992).

Assuming the Examiner holds to the application of

Schmitt and Roe in the present case, it is asserted that Applicant's invention is not obvious from the combination of Schmitt and Roe. Schmitt, as noted by the Examiner, does not purport to produce a tackifier. Schmitt is concerned with producing pellets or balls by the use of emulsions. Schmitt does not mention cross-linking in any manner. Schmitt does not also mention sodium borate and the remaining member of the Markush found in subsection c. of Applicant's newly submitted claim 40.

Roe discloses compositions for making iron ore agglomerations. Although Roe mentions the use of borax to produce pellets there is no mention of cross-linking of any components of a tackifier over a soil surface. Moreover, there is no suggestion in Schmitt or Roe that the Roe borax be added to the Schmitt reference. In fact there would be no need to do so if Schmitt has produced a palletized material which is already cross-linked. Moreover, the addition of borate materials to the Roe emulsion is stated as having the effect of "improving ballability" (more pellets in the correct size range) as well as increasing pellet dry strength." Column 6, lines 32-36. This cannot be interpreted to mean cross-linking of a polymeric material. A review of the Evaluation of the Invention section of Roe, column 7, lines 5-68 and column 8, lines 1-19 show 13 compositions. Compositions 1-11 use sodium tetraborate while compositions 12 and 13 do not. Thus, it is unclear from Example 1 whether pellet dry strength has been increased by the sodium

tetraborate. Referring to Table 4 of Example 3, it should be noted that compositions 12 and 13 which contain no sodium borate achieved pellet strengths comparable to the compositions which did contain the sodium tetraborate. This fact is confirmed by Roe column 10, lines 32-34. Thus, it is not clear that the Roe statement of increased pellet strength is correct. A person of ordinary skill in the art in the production of tackifier compositions would review the Roe specification and not find any support for cross-linking, of a polymeric tackifier since that is not mentioned. In addition, increase pellet strength, if it occurs at all, is not attributed to cross-linking in Roe. Thus, there is no suggestion or need whatsoever that the Roe reference be applied to Schmitt to produce a cross-linking tackifier shown by Applicant's amended claims. Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462 (Fed. Cir. 1984).

The West reference shows the addition of fibers to a hydraulic binder composition. There is no teaching in West of Applicant's combination of elements to produce Applicant's tackifier.

Applicant was the first to invent a tackifier for combining particulate matter on a soil surface which uses the combination of a synthetic polymer of the polyacrylamide group, a natural organic material, and a cross-linking agent of the borate genre, to Applicant's composition produces a long lasting

stabilized soil surface which is suitable for hydro seeding and is compatible with live entities. Applicant has solved a problem, the solution of which has been long sought after by others. In addition, others have failed to achieve this result. The combination of Schmitt and Roe would produce a palletizing emulsion which is suitable for pelletizing metallic ores in a certain manner. It is even unclear as to whether the pellet strength is increased by the addition of sodium tetraborate components since this is not fully supported by the Roe reference. In any case, a person of ordinary skill in the art in the production of tackifiers would not find a suggestion in combining Schmitt and Roe to produce Applicant's tackifier.

It is requested that the application be reconsidered and passed to issue at an early date.

Respectfully submitted,

  
**THEODORE J. BIELEN, JR.**  
Registration No: 27,420

TJB:jjl

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**BIELEN, LAMPE & THOEMING**

1990 N. California Boulevard, Suite 720  
Walnut Creek, California 94596

Tel: (925) 937-1515

Fax: (925) 937-1529